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In re Application of	:	DECISION
PAUKOV	:	
Application No.: 10/523,109	:	
PCT No.: PCT/CA03/00927	:	
Int. Filing Date: 10 June 2003	:	
Priority Date: 10 June 2002	:	
Attorney Docket No.: 2282-173	:	
For: BUNG FOR A PAPER ROLL	:	

This decision is in response to applicant's submission filed in the United States Patent and Trademark Office (USPTO) on 16 November 2005.

BACKGROUND

On 10 June 2003, applicant filed international application PCT/CA03/00927, which designated the U.S. and claimed a priority date of 10 June 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 18 December 2003. The thirty-month period for paying the basic national fee in the United States expired at midnight on 10 December 2004.

On 03 February 2005, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date, an assertion of small entity status, a declaration of the inventor, and a petition under 37 CFR 1.137(b) to revive the application.

On 16 August 2005, a decision was mailed dismissing applicant's petition under 37 CFR 1.137(b). Specifically, it was noted that the showing of record was not sufficient to establish to the satisfaction of the Commissioner that the delay was unintentional.

On 17 October 2005, applicant filed a petition/fee for a one-month extension of time.

On 16 November 2005, the instant request for reconsideration of the petition to revive under 37 CFR 1.137(b) was filed, which was accompanied by Exhibits A-C.

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DISCUSSION

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As noted in the decision mailed 16 August 2005, items (1) and (3) have been satisfied.

As to item (2), the showing is still not sufficient to establish to the satisfaction of the Commissioner that the delay was unintentional. The e-mail from Kevin Shoesmith to Kim Smith dated 10 June 2004 (Exhibit C) indicates by implication that file 2282-167 was intended to be closed or abandoned. The declaration of Fay Ferreira (Exhibit A) indicates that this was an error (paragraph 5). However, this indication is merely an assertion that there was an error; no evidence has been provided to support this assertion. For example, it is unclear what the basis was for Mr. Shoesmith's conclusions regarding which files should remain open. For example, was another list generated by someone other than Mr. Shoesmith and the file numbers taken from such a second list? Or did Mr. Shoesmith generate a second list by himself? And if so, what was his decision based on? For example, it may have been based on something like commercial viability estimates. However, there is no evidence that this something, e.g., commercial viability estimates, indicated that file 2282-167 should have been kept open but was inadvertently left off the list sent in the e-mail.

CONCLUSION

The petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice, for the reasons set forth above.

Applicant is hereby given the time limit of **TWO (2) MONTHS** from the mail date of this communication in order to file a proper response.

Failure to timely file a proper response to this decision in a timely manner will result in abandonment of the application with regards to national stage prosecution in the United States.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer
Legal Examiner

Application No.: 10/523,109

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